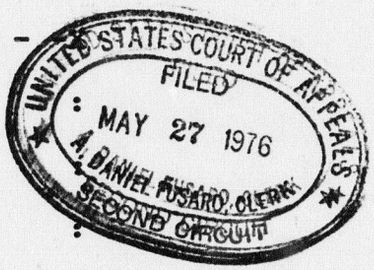
United States Court of Appeals

for the Second Circuit

APPENDIX

76-5012

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT



IN RE: ORE CARGO, INC.,

Bankrupt

ISRAEL DISCOUNT BANK LIMITED,

Plaintiff-Appellant

-v-

JACOB GOTTESMAN, Trustee in Bankruptcy of Ore Cargo, Inc.

Defendant-Appellee.

Docket No. 76-5012

B P/S

JOINT APPENDIX

BURKE & PARSONS
Attorneys for Plaintiff-Appellant
Office and P.O. Address
52 Wall Street
New York, N.Y. 10005

SHERMAN & CITRON
Attorneys for Defendant-Appellee
Office and P.O. Address
1290 Avenue of the Americas
New York, N.Y. 10019

On Appeal from the United States District Court,
For the Southern District of New York

PAGINATION AS IN ORIGINAL COPY

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Docket No. 76-5012

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IN RE ORE CARGO, INC.,

Bankrupt,

ISRAEL DISCOUNT BANK LIMITED,

Plaintiff,

-v-

JACOB GOTTESMAN, Trustee in Bankruptcy of Ore Cargo, Inc.,

Defendant.

DOCKET ENTRIES

TRUSTEE

ATTORNEY FOR TRUSTEE

CHANGES OF PRINCIPALS

PROCEEDINGS

DATE	
9-25-72	Filed involuntary petition. Referred to Referee Herzog.
10-17-72	Filed True copy of Referee's order of adjudication, dated 10-11-72.
10-26-72	Filed copy of List of Creditors.
7/31/75	Filed NOTICE OF APPEAL to the District Court from the order of Bankruptcy Judge Herzog Dated 5/12/75 that granted the defendant's motion for summary judgment and dismissed the complaint. (Israel Discount Bank Ltd. Plaintiff). RET: September 16, 1975 at 10:30 A.M. in room 506. f.
7/31/75	Filed Designation of Record on Appeal and Statement of Issues. f.

FORM BK 74 D
SEP. 1962

UNITED STATES DISTRICT COURTS
BANKRUPTCY DOCKET – COPY

[ ] CHECK THIS BOX IF FILING FEES WERE PAID IN FULL AT TIME OF FILING

9/9/75	Filed BRIEF OF PLAINTIFF-APPELLANT. Sub By: Burke & Parsons, f.
1/6/76	Filed MEMO-ENDORSED on back of the Notice of Appeal dated 7/31/75. The order appealed from is affirmed. So ordered Duffy, J. dated 12/31/75. Copy to Bank Judge. m/n: BURKE & PARSONS, 52 Wall Street, N.Y.N.Y., SHERMAN & CITRON, 1290 Avenue of the Americas, New York, New York 10019 & Judge Herzog, U,S. Courthouse 40 Center Street, N.Y.N.Y.
2/10/76	Filed NOTICE OF APPEAL to USCA by Israel Discount Bank Ltd., from the order of Judge Duffy dated 1/6/76. M/N .

A TRUE COPY
RAYMOND F. BURGHARDT, Clerk

By _____
Deputy Clerk

A 1

GENERAL SECURITY AGREEMENT

In order to obtain loans, advances, acceptances, letters of credit and/or other financial accommodations from or otherwise deal with, Israel Discount Bank Limited, New York, N. Y. (said Israel Discount Bank Limited being hereinafter referred to as "the Bank") and in consideration therefor, the undersigned hereby agree(s) with the Bank as follows in respect of any and all liabilities of the undersigned to the Bank and also to others to the extent of their participations granted to or interests therein created or acquired for them by the Bank, due or to become due, now or hereafter existing, direct or indirect, absolute or contingent, liquidated or unliquidated, at law or in equity or otherwise, and whether tortious, or acquired by pledge or purchase from the undersigned or others, or incurred by overdraft, direct or implied contract, or arising by operation of law or in any other manner whatsoever (all of which liabilities are hereinafter referred to as "the obligations") to wit:

1. All loans, advances or credits heretofore or hereafter obtained from the Bank by the undersigned, as well as all present and future indebtedness of the undersigned to the Bank, shall, unless otherwise agreed upon, be repayable by the undersigned to the Bank upon demand with interest. Interest on obligations with stated maturities shall continue during any extension in time of payment resulting from a stated payment date falling on Saturday, Sunday or a public holiday.

2. As security for the repayment of the obligations, the undersigned hereby grant(s) to the Bank a security interest in, a general lien upon and/or right of set-off of, all personal property and fixtures of the undersigned, whether now or hereafter existing or now owned or hereafter acquired and wherever located, of every kind and description, tangible or intangible, including, but not limited to, the balance of every deposit account, now or hereafter existing, of the undersigned with the Bank and any other claim of the undersigned against the Bank, now or hereafter existing, and all money, goods, instruments, securities, documents, chattel paper, accounts, contract rights, general intangibles, credits, claims, demands and any other property, rights and interests of the undersigned, and the proceeds, products and accessions of and to any thereof (all of which property is hereinafter referred to as the "Security").

3. At any time and from time to time, upon the demand of the Bank, the undersigned will: (1) deliver and pledge to the Bank, indorsed and/or accompanied by such instruments of assignment and transfer in such form and substance as the Bank may request, any and all instruments, documents and/or chattel paper as the Bank may specify in its demand; (2) give, execute, deliver, file and/or record any notice, statement, instrument, document, agreement or other papers that may be necessary or desirable or that the Bank may request, in order to create, preserve, perfect, or validate any security interest granted pursuant hereto or to enable the Bank to exercise and enforce its rights hereunder or with respect to such security interest; (3) keep and stamp or otherwise mark any and all documents and chattel paper and its individual books and records relating to inventory, accounts and contract rights in such manner as the Bank may require; and (4) permit representatives of the Bank at any time to inspect its inventory and to inspect and make abstracts from the undersigned's books and records pertaining to inventory, accounts, contract rights, chattel paper, instruments and documents. The right is expressly granted to the Bank, at its discretion, to file one or more financing statements under the Uniform Commercial Code naming the undersigned as debtor and the Bank as secured party and indicating therein the types or describing the items of Security herein specified; all without notice and without liability except to account for property actually received by it. Without the prior written consent of the Bank the undersigned will not file or authorize or permit to be filed in any jurisdiction any such financing or like statement in which the Bank is not named as the sole secured party.

4. The undersigned further agree(s), upon the demand of the Bank, to deliver to the Bank additional collateral to its satisfaction, and/or to make such payment on account of the obligations as will be satisfactory to the Bank, should the market value of any of the Security at any time subject hereto decline, or should any change occur in the marketability thereof, or should any of the Security for any reason be deemed unsatisfactory to the Bank.

5. The undersigned hereby agree(s) to reimburse the Bank for any and all costs and expenses of every kind which may be paid or incurred by the Bank in the collection of, and/or realization upon, and/or the attempted collection of, and/or attempted realization upon, any and/or all of the obligations and/or any and/or all of the Security, and/or for the insurance and/or in the sale or delivery, as in this agreement provided, of any and/or all of the Security, and for the care of the Security and defending or asserting the rights and claims of the Bank in respect thereof, by litigation or otherwise, and the repayment of all such costs and expenses (including legal costs and charges for legal services) is hereby secured in the same manner and to the same extent as any of the obligations.

6. If the undersigned shall default in the performance of any of its agreements herein or in any instrument or document delivered pursuant hereto, or upon the non-payment of any of the obligations at maturity, or in case of failure of the undersigned to meet at maturity any liabilities of the undersigned to any other party, or upon the failure of the undersigned to furnish additional security to the satisfaction of the Bank as above provided, or upon the death, dissolution, merger, consolidation, termination of existence, declared insolvency or failure in business of, or appointment of a receiver for, or commission of any act of bankruptcy by the undersigned, or the entry of any judgment against the undersigned, or levy under a warrant of attachment upon the credit or property of the undersigned, or in case any petition in bankruptcy should be filed by or against the undersigned, or any proceedings in bankruptcy or under any act of Congress or other governmental authority relating to the relief of debtors should be commenced for the relief or readjustment of any indebtedness of the undersigned, either through reorganization, composition, extension or otherwise, or if the undersigned or any copartnership of which the undersigned is (are) a member (or members) shall suspend the transaction of his, its or their usual business, or be expelled from or suspended by any stock or securities exchange or other exchange, or in case any of the foregoing defaults or contingencies be committed by, or occur with reference to, any one or more of the undersigned (if there be more than one) or any maker, drawer, acceptor, endorser, guarantor, surety or accommodation party or other person liable upon or for any of the obligations or Security, all of the obligations of the undersigned and of each of them, to the Bank, shall at the option of the Bank immediately mature and become forthwith due and payable, without demand or notice.

Upon default hereunder or in connection with any of the obligations (whether such default be that of the undersigned or of any other party obligated thereon), the undersigned shall, at the request of the Bank, assemble the Security at such place or places as the Bank designates in its request. The Bank shall have the rights and remedies with respect to the Security of a secured party under the Uniform Commercial Code (whether or not the Code is in effect in the jurisdiction where the rights and remedies are asserted). In addition, with respect to the Security, or any part thereof, which shall then be or shall thereafter come into the possession or custody of the Bank or any of its agents, associates or correspondents, the Bank may assign, transfer, sell or cause to be sold in the Borough of Manhattan, New York City, or elsewhere, in one or more sales or parcels, at such price as the Bank may deem best, and for cash or on credit or for future delivery, without assumption of any credit risk, all or any of the Security, at any broker's board or at public or private sale, without advertisement, demand of performance or notice of intention to sell or of time or place of sale (except such notice as is required by applicable statute and cannot be waived), and the Bank or anyone else may be the purchaser of any or all of the Security so sold and thereafter hold the same absolutely, free from any claim or right of whatsoever kind, including any equity of redemption, of the undersigned, any such demand, notice or right and equity being hereby expressly waived and released. In the case of any failure of the purchaser to take up and pay for the Security so sold, the Security may be again sold. No entry of judgment shall impair any rights or powers granted hereunder.

Upon any such sale or other realization upon any or all of the Security, or the application of moneys held by the Bank on deposit or otherwise for the undersigned, or any one or more of them, the Bank may apply the proceeds thereof, both principal and income, after the payment therefrom of all expenses incident to sale, delivery and/or collection, to or toward the payment of either the principal or the interest (or partly to one and partly to the other) of any or all of the obligations at its option, in such proportions and in such sequence or order as the Bank in its sole discretion may determine, and the undersigned shall continue liable for any deficiency remaining after such application.

7. The Bank at its discretion without notice to the undersigned, and whether or not any of the obligations be due, may transfer to its own name, or to the name of a nominee or nominees, any of the Security, and in its name or in the name of any nominee or nominees, or in the name or names of the undersigned, or of any one or more of them, or otherwise, may endorse, demand, sue for, collect and/or receive any money or property at any time due, payable or receivable upon, or on account of, or in exchange for, or may take any action it may deem necessary for its own protection with respect to, any of the Security, and may vote the Security. The Bank, whether or not any of the obligations be due, in its name, or in the name or names of any one or more of the undersigned, or otherwise, may make any compromise or settlement it deems desirable with reference to and/or otherwise realize upon, with or without suit, any of the Security, or any claim by or against the Bank with respect thereto or to the proceeds thereof, and the Bank may renew or extend the time of payment or performance, or arrange for payment in installments, or otherwise modify the terms as to any other parties liable thereon, or release, any of the Security, or of any claims with respect thereto or to the proceeds thereof. By the exercising of any of the foregoing powers the Bank shall not incur any responsibility to, or discharge or otherwise affect any liability of the undersigned with respect to any of the obligations, or upon, or in connection with, any of the Security. The Bank shall be deemed to have possession of any of the Security in transit to or set apart for it or any of its agents, associates or correspondents. The Bank shall not be required to take any steps necessary to preserve any rights against prior parties to any of the Security.

8. As respects any instrument to which the undersigned, or any one or more of them, is a party or which at any time may be included in or which may evidence the obligations or the Security, the undersigned hereby waive(s) presentment, protest and notice of protest and dishonor and further waives any and all other notices and demands whatsoever, whether or not relating to such instruments.

9. If any tangible property shall at any time be included in the Security, the undersigned agree(s) at the undersigned's own expense at all time to keep the same fully insured with responsible companies acceptable to the Bank against loss by fire and any other risks to which said property may be subject. The insurance policies or certificates on said property shall be deposited with the Bank on demand, and the loss thereunder shall be payable to the Bank or as the Bank may elect. In case of failure on the part of the undersigned to effect such insurance, the Bank may itself insure such property at the expense of the undersigned and the repayment of such expenses is hereby secured in the same manner and to the same extent as any of the obligations.

10. The Bank may assign or transfer the whole or any part of any of the obligations, and may transfer therewith the whole or any part of the Security. The transferee shall have the same rights and powers with reference to the obligations so transferred and the Security transferred therewith as are hereby given to the Bank, and upon such transfer, the Bank shall be fully discharged from all claims with respect to any Security so transferred, but shall itself retain all rights and powers hereby given with respect to any Security not so transferred.

11. No delay on the part of the Bank or any transferee in exercising any power or right hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any power or right hereunder preclude other or further exercise thereof, or the exercise of any other power or right. The rights, remedies and powers hereby conferred are irrevocable, cumulative, and not exclusive of but in addition to, any rights, remedies and powers which the Bank, or its transferees, may or would otherwise have.

12. All rights, questions, disputes and controversies arising under this agreement shall be determined according to the laws of the State of New York. Unless the context otherwise requires, all terms used herein which are defined in the Uniform Commercial Code shall have the meanings therein stated.

13. Calls for collateral or any notices to the undersigned may be personally made or given, or may be made or given by leaving the same at the address given below, or at the last known address of the undersigned, or any of them, or by mailing, telephoning, telegraphing or cabling the same to any such address with the same effect as if delivered to the undersigned in person.

14. If the undersigned are more than one, this agreement shall be joint and several. In such case, each of the undersigned, to secure the repayment of any and all obligations as above defined, now or hereafter owing to the Bank by him or it, individually and/or jointly with any other or others, hereby confers upon the Bank with respect to any and all property or property rights now or hereafter owned by him or it separately, or jointly with such other or others, the same security, rights, powers, and remedies as have hereinbefore been conferred upon the Bank with respect to the joint property and property rights of all of the undersigned for the repayment of their joint obligations.

15. This agreement shall be a continuing agreement applying to all future as well as to all existing transactions. It shall bind all administrators, executors, heirs, partners, successors and assigns of the undersigned, and each of them, and shall not be affected by any change in personnel, or by the death or retirement of any member of a partnership. No provisions hereof shall be modified or limited except by a written instrument expressly referring hereto and to the provision so modified or limited.

ONE CARGO INC.

By _____ President

New York January 15 19 71

Address _____

_____

Address _____

LN 13 (9-67) 2500 AG

Transcript of Oral Argument

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
(In Bankruptcy)

In the Matter
of

ORE CARGO, INC.,
Bankrupt

ISRAEL DISCOUNT BANK LIMITED,
Plaintiff
v.
JACOB GOTTESMAN, Trustee in Bankruptcy of Ore Cargo, Inc.,
Defendant

No. 74-B-878
(so in original, should be 72 B 878)

United States Court House
Foley Square, New York, N.Y.
March 14, 1975 - 11:55 A.M.

Before:

HON. ASA S. HERZOG
Bankruptcy Judge

ADJOURNED HEARING ON MOTION TO DISMISS
RECLAMATION BY ISRAEL DISCOUNT BANK

- - - - -

Appearances:

SHERMAN & CITRON, Esqs.
Attorneys for Trustee
1290 Avenue of the Americas
New York, New York 10019
By: MICHAEL WEXELBAUM, Esq., of Counsel

BEATRICE R. GOTTLIEB
Official Court Reporter
Room 230, United States Courthouse
Foley Square, New York, N. Y. 10007
REctor 2-3933

BG/r

A P P E A R A N C E S (Continued):

BURKE & PARSONS, Esqs.
Attorneys for Israel Discount Bank
52 Wall Street
New York, New York 10005
By: J. LESTER PARSONS, III, Esq., of Counsel

- - - - -

THE COURT: This is an adjourned motion to dismiss reclamation by Israel Discount Bank.

MR. WEXELBAUM: That is correct, your Honor.

MR. PARSONS: Excuse me, your Honor. I am not sure that we are ready to try --

THE COURT: I assume we are not ready to try the reclamation.

MR. WEXELBAUM: Your Honor, this is for calendar purposes for argument on the motion.

THE COURT: To dismiss the complaint.

MR. WEXELBAUM: Right.

I submit our reply (handing same to the Court).

Your Honor, this is a reclamation proceeding instituted by the Israel Discount Bank wherein they seek to recover a fund of approximately $20,000 that is presently in the possession of the trustee in bankruptcy.

It is trustee's position that these are the

only moneys, the only property in his possession, and they are the only moneys or property subject to this instant reclamation proceeding, and if any other property should in the future come into trustee's possession, a further reclamation proceeding can be instituted and litigated at that time.

With regard to the fund presently in the possession of the trustee, it is the trustee's position that these moneys represent the proceeds of a tort claim and as such (1) they are not subject to any security interest perfected under the Uniform Commercial Code, pursuant to Section 9-104, subd. k, and furthermore, under the Common Law of New York the only way any interest in that tort fund could have been obtained is by an assignment thereof, and no assignment was given by the bankrupt to the Israel Discount Bank.

If I may digress for one moment, one issue of fact was raised by the papers in opposition. The one issue raised by the papers in opposition is a question whether the fund in the trustee's possession is in fact the proceeds of a tort claim.

The papers in opposition point out that these moneys could have been paid to the bankrupt or the bankrupt estate by the bankrupt's insurers, the insurance company covering the vessel owned by the bankrupt, and if so they would not be the proceeds of a tort claim.

However, the papers in opposition do concede that if the money was paid by the owners or insurers of the other vessel that collided with the bankrupt's vessel then they do in fact represent the proceeds of a tort claim.

It is the trustee's intention, and with the permission of this Court to do so, next week to submit a supplemental affidavit of John R. Rogers, Esq., -- he is a member of the firm of Burlingham, Underwood & Lord. I had hoped to have had that affidavit submitted to the Court today but there was apparently a failure of communication. I spoke to Mr. Rogers quite some time ago; he was to get back to me, and when I tried to reach him on Monday of this week I was advised that he was out of the country and would be returning on March 18th.

Mr. Rogers is special counsel to the trustee in a proceeding presently pending before Judge Wyatt,

unrelated to the instant action and unrelated to the collision in question.

Mr. Rogers was attorney to the bankrupt, prosecuting the claim on behalf of the bankrupt that arose out of the collision with the bankrupt's vessel and the HASLACH which was the vessel that collided into the bankrupt's vessel, SS JOHN CROSBY.

Mr. Rogers has informed me that as a matter of fact these moneys were not paid by the bankrupt's insurers and were in fact paid by the HASLACH ~~insurance~~ INTERESTS', the owners ~~of~~ OR the insurers of the HASLACH.

Therefore, I think it will be conceded upon receipt of that affidavit that the proceeds do represent the proceeds of a tort claim.

Now, in this proceeding Israel is predicating its claim of a security interest in these proceeds pursuant to three separate documents:

(1) a general security agreement that was annexed to my moving affidavit.

The papers in ~~our position~~ OPPOSITION then submitted, and this was the first time this document was served upon the trustee, or that he had notice thereof, a document labelled "general assignment".

The papers in ~~our position~~ OPPOSITION also annexed a first

preferred mortgage, which the trustee did have notice of, your Honor, prior to this proceeding.

I will deal with those documents in order, if I may.

With regard to the general security agreement, this was a UCC security agreement, and the security interest extended thereby was perfected or has allegedly been perfected --

THE COURT: Purportedly been perfected.

MR. WEXELBAUM: (Continuing) -- purportedly perfected by filing under the UCC.

For purposes of the instant application the trustee has conceded, arguendo, that it was perfected by such filing.

THE COURT: You concede that they filed as required by the UCC.

MR. WEXELBAUM: Correct.

THE COURT: But you do not concede that you can perfect a tort claim by filing.

MR. WEXELBAUM: Your Honor understands our argument. A tort claim is not subject to a UCC security interest.

Now, the papers in ~~our position~~ OPPOSITION have made much of the fact that in this general security agreement

certain other rights were extended to the Bank. However, nowhere therein is there set forth an assignment of a tort claim to the Israel Discount Bank, and it is our position that as a matter of law without such specific assignment there was no security interest vested --

THE COURT: You mentioned a document called an assignment.

MR. WEXELBAUM: I will deal with that. I am now dealing with just the general security agreement. It is our position that this does not contain an assignment; that whatever security interest was vested thereunder was strictly a security interest subject to the provisions of the Uniform Commercial Code, and --

THE COURT: Don't drop your voice.

MR. WEXELBAUM: I said it is our position that the proceeds of the tort claim are not subject to perfection or UCC security interests.

With regard to the general assignment that was annexed to ~~our~~ the papers in ~~our position,~~ OPPOSITION it is our position that this assignment only conveys an interest in contract rights.

We had set forth a pertinent provision of the

general assignment in our papers in opposition, in our reply papers, and I won't bother to read them to your Honor, but I think your Honor will see therefrom that there was no assignment of the tort claim; the only thing assigned by this general assignment were contract rights.

The papers in opposition argue that certain language in the general assignment, which refers to something as "contracts or arrangements," and their argument is that a tort claim or a collision claim should be deemed an arrangement applied at law. I see no basis for that argument whatsoever.

THE COURT: I consider an arrangement a Chapter XI.

MR. WEXELBAUM: With regard to the question of an assignment the papers and affidavit in opposition of an officer of Israel Discount Bank, John G. Manos, and his affidavit in opposition states that the bankrupt never revealed the existence of this tort claim to Israel Discount Bank.

Therefore, they had no knowledge of it and could have obtained no assignment thereof.

It is our position that an essential element of an assignment is an intent to assign. Obviously

the bankrupt had no intent to assign this tort claim to the Bank, ~~and~~ as it did not tell the Bank it existed.

In addition, the Bank did not rely on this tort claim as security for its loan.

THE COURT: You cannot acquire an interest in a claim because it is not revealed to you, unless you transfer and assign all existing rights including tort claims.

MR. WEXELBAUM: Correct, your Honor.

THE COURT: That point really escapes me. I will hear counsel on it, how their failure to disclose an interest in a tort claim, gives them any right to that tort claim.

MR. WEXELBAUM: That is one of the arguments we made in our papers.

THE COURT: The essential thing is intent to assign. You cannot assign without intent to assign, and technically there has to be a reliance upon that assignment of a tort claim, and according to you I don't think either of those occurred.

MR. WEXELBAUM: Correct, your Honor, and that is set forth in our papers, and I make that representation based upon Mr. Manos' affidavit, that it was not revealed to the Bank.

THE COURT: When you get it, serve it upon counsel.

MR. WEXELBAUM: Mr. Manos is an officer of the Bank.

THE COURT: I am talking about that supplemental affidavit.

MR. WEXELBAUM: Definitely.

The final document relied upon by the Israel Discount Bank is its first preferred mortgage. This is a first preferred mortgage on the vessel, SS JOHN CROSBY. This mortgage was made, I believe, on or about January 15, 1971, which is the time Israel made its loan to the bankrupt.

The accident in question, out of which the tort claim arose, occurred in October, 1969, more than a year prior to the making of the mortgage.

Our first point with regard to the mortgage is that it explicitly states what the bankrupt was granting to the Israel Discount Bank, and that was only a security interest in the whole of the vessel and all of the appurtenances thereunto appertaining.

One of the basis of the Bank's argument why this mortgage should be deemed to contain an

assignment of the tort claim to them is a clause which is quoted at length in our papers, reply papers. I won't bother reading that to your Honor. However, I will say that this clause which is paragraph 15(5) of the first preferred mortgage merely constitutes a power of attorney. I will read excerpts from them to your Honor.

"The mortgagee may in the name of the owner give and execute certain documents in the name of the owner, may endorse and accept in the name of the owner all checks, notes, drafts, warrants, agreements, and other instruments and the owner does hereby irrevocably appoint the mortgagee or its appointees, the true and lawful attorney-in-fact of the owner.***"

THE COURT: It is a power of attorney, that's all.

MR. WEXELBAUM: It is a power of attorney.

THE COURT: What did they say that does?

MR. WEXELBAUM: They claim that that clause possibly in collusion with subsequent clause, paragraph 19, constitutes an assignment of the tort claim to the Bank. It is our position it does not.

The final provision relied on by the Bank is paragraph 19 of the mortgage which says that the mortgagee, Israel Discount Bank may, should it collect any moneys in the exercise of its power of attorney, apply those moneys to the indebtedness outstanding owed by the mortgagor.

Now, it is our position, and I have cited one case to that effect in our brief, ~~but~~ this is merely a power of diversion and does not extend a security interest to the Bank. First of all, they did not exercise that power of attorney, no proceeds came into their possession, so they had no possessory lien.

I believe when your Honor reads paragraph 19, you will see that that also does not constitute an assignment of the tort claim.

My papers are rather lengthy and I am afraid I may have gone on too long, so I will sit down at this point.

THE COURT: I told you that you had all the time you want.

MR. WEXELBAUM: I would like to reserve some time for a brief rebuttal which I may feel is necessary.

THE COURT: All right, let's go ahead.

MR. PARSONS: May it please your Honor, I have to concede there is no express assignment of this tort claim here.

THE COURT: It has got to be read into the papers.

MR. PARSONS: It has to be read into the papers. It is quite clear and Mr. Manos is quite clear in his affidavit, the bank never knew about any such thing, it was concealed by the bankrupt. Therefore we must also concede it was not --

THE COURT: The use of the word "concealed" may not be fair. He just didn't tell them about it. It may not have been his intention to involve them with that at all. The word "concealed" indicates something of a wrong-doing. He just did not tell them about it.

MR. PARSONS: No, this was not disclosed to the Bank. I will accept that.

I think what we have got here, and it is quite clear from the general security agreement, that the intention of the parties -- at least as expressed in that document -- was to give the Bank all the rights a secured party under the Uniform Commercial Code would have if applied with respect

to a variety of assets of the bankrupt including claims like this one, and the general assignment and the mortgage are really relevant only insofar as they show the Bank was aware of tort claims as being a possible thing that could be involved in operating the vessel, and if it was something which the Bank expected, something to be used by it pursuant to the power of attorney.

THE COURT: If they were so aware of it why didn't they never once use the word "tort" or "tort claim". This is a sophisticated party we are dealing with. You say it included everything including the tort claim, why didn't they somewhere, someplace, say this assignment would include all tort claims. They never did.

MR. PARSONS: Your Honor, they didn't in the general --

THE COURT: What you are asking me to do is to read all documents and from their context to say that that was the intention of the parties.

MR. PARSONS: Yes, your Honor.

THE COURT: That is what you are asking me to do.

MR. PARSONS: Yes, your Honor, but I think it

is quite clear that under this general security agreement, that the language or the words "security interest", purports to convey to the Bank a security interest and a general lien upon all these things including the claim, contract rights, creditor claims, and certainly to cover that claim.

I should not comment why they wrote it this way, but I don't think there was any suspicion in anybody's mind that the tort claims had to be specially mentioned, and now we find that the Uniform Commercial Code does exclude tort claims from the general operation of the perfection and filing requirements, and so forth.

It seems to me that this document is intended to give the Bank all rights of a secured -- the normal rights it would get under the UCC. Now because this type of thing is exempt completely different rules apply, and that the document is sufficient on its face means absolutely nothing. I don't see that there is any reason to go that far. I think this is analagous to an assignment --

THE COURT: I am not so sure of this. But aren't you up against another problem: aren't you up against the problem as between the Bank and the

bankrupt you might have that right, but now you have an intervening trustee as of the date of bankruptcy with all the rights of a creditor whose execution has been returned unsatisfied. In other words, I am referring to the strong-arm clause.

MR. PARSONS: I understand, your Honor.

THE COURT: Aren't you up against that now?

MR. PARSONS: Well, it is my position that this is sufficient to give the Bank the right to defeat the trustee's strong-arm right. It seems to me that the Bank has done all that is necessary, or all that it is required. From the written instrument there was no filing required. I don't see why anybody should come in subsequently and get any superior rights.

THE COURT: As a matter of fact, the conduct of the Bank would seem to indicate that they did not intend to include tort claims because they went ahead and perfected their security under the UCC, when there is no provision forany perfection -- or I will put it this way: tort claims are excepted from the operation of the UCC.

MR. PARSONS: Exactly, your Honor.

THE COURT: The fact that they did do that, they

perfected it, and it would stand as a perfected instrument, against the contract claim. The fact that they did that would seem to indicate they knew what they were doing, and that that is what they had in mind. If they had in mind the tort claim they would have taken some other steps to protect themselves.

I am just thinking out loud because I want to hear your response to it.

MR. PARSONS: Your Honor, certainly tort claims were not the only thing the Bank had in mind with this agreement. There is no question they were trying to cover other things which quite clearly were subject to the Uniform Commercial Code, but the fact that they filed to protect their right I don't see how you can read that to say therefore they weren't intending to perfect their rights to assets that were SUBJECT TO THE U.C.C.

THE COURT: How much after your transaction was the claim settled?

MR. PARSONS: How much after?

THE COURT: Right.

MR. PARSONS: Apparently some three years, something like three years.

THE COURT: And how much prior to that had the accident occurred?

MR. PARSONS: I believe the accident was in --

MR. WEXELBAUM: October 1969.

THE COURT: And this transaction was 14 months later.

MR. PARSONS: 14 or 16 months.

THE COURT: Had suit been instituted by them?

MR. WEXELBAUM: Your Honor, I do not believe a suit was ever instituted in a formal sense. I think some legal proceedings were instituted in England to effectuate a settlement, but no adversary proceeding was ever instituted. I believe they settled it before it reached that stage.

THE COURT: Anything further you wish to add, or will it satisfy you if I study all these papers very carefully. Do you have a memorandum?

MR. PARSONS: Yes, your Honor, I believe it is filed.

THE COURT: If it is filed I have it.

MR. WEXELBAUM: The last time I came in and adjourned the matter I did see Mr. Parson's brief.

THE COURT: Yes, I see it.

I will mark this for decision.

How long do you want to file that affidavit?

MR. WEXELBAUM: I was told by Mr. Rogers' secretary that he is due back on Tuesday. I should be able to file it on Wednesday. If your Honor would give me a week --

THE COURT: Well I won't be able to get to it next week because I won't be here, but I will be back on the 24th, so you will file the affidavit on or before March 24th, and opposing side will have ten days thereafter to submit any papers they wish to submit.

Thank you very much.

- - - - -

(Hearing concluded.)

- - - - -

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re ORE CARGO, INC.,	
Bankrupt,	
ISRAEL DISCOUNT BANK LIMITED,	
Plaintiff,	In Bankruptcy
-v-	No. 72 B 878
JACOB GOTTESMAN, Trustee in Bankruptcy of Ore Cargo, Inc.,	
Defendant.	

APPEARANCES:

SHERMAN & CITRON, ESQS.,
By: MICHAEL WEXELBAUM, ESQ.,
Of Counsel
Attorneys for Trustee

BURKE & PARSONS, ESQS.,
By: J. LESTER PARSONS, III,
Of Counsel
Attorneys for Israel Discount Bank

ASA S. HERZOG, Bankruptcy Judge:

The trustee, defendant in this adversary proceeding, moves to dismiss the complaint seeking reclamation on the ground that it fails to state a claim upon which relief can

be granted or in the alternative, for summary judgment dismissing the complaint.

The proceeding was brought by Israel Discount Bank Limited (Israel) to reclaim (a) The sum of $20,968.16 presently in the possession of the trustee; and (2) Any other property in the possession of the trustee and subject to Israel's alleged security interest.

For the reasons hereinafter appearing, I find that the dispute between the parties revolves about certain funds presently in the possession of the trustee, representing the balance of the proceeds of the bankrupt's claim for damages arising out of a collision between its vessel, the John Crosby, and another vessel, the Haslach.

I have treated the relief sought alleging failure of the pleading to state a claim upon which relief can be granted pursuant to FRCP 12b, as a motion for Rule 56 summary judgment. Both parties have been given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

The function of the summary judgment procedure is

to promptly dispose of actions to which there actually is no genuine issue of fact, albeit such an issue is raised by the pleading. The object of the motion, as observed by the late Justice Benjamin Cardozo, is to separate what is formal or pretended and what is genuine and substantial, so that only the latter may subject a suitor to the burden of a trial. If there is no genuine issue as to a material fact, the parties are not entitled to a trial and judgment may be awarded by applying the law to the undisputed facts. Richard v. Credit Suisse, 242 N.Y. 346 (1926); William J. Kelley Co., v. R.F.C., 172 F.2d 865 (1st Cir. 1949); SEC v. Payne, 35 F.Supp. 873 (S.D.N.Y. 1940).

The sole issue of fact presented by the pleadings and papers on the motion is whether the fund in the trustee's possession is in fact the proceeds of a tort claim. That such is the case is not disputed. In its papers Israel concedes that if the money was paid by the owners or insurers of the vessel which collided with bankrupt's vessel, then they do indeed represent the proceeds of a tort claim. The supplemental affidavit submitted by John R. Rogers, whose

firm prosecuted the collision claim on behalf of the bankrupt, clearly states, and I must accept his statement as true, that the money recovered by the trustee was obtained from the owners or insurers of the other vessel. Accordingly, I find that the money which is the subject of the present controversy represents the proceeds of a tort claim. With that sole issue of fact disposed of, there remains only the question of whether by reason of certain documents, the existence of which is not disputed, Israel is entitled to those proceeds. That is a question of law which does not necessitate a trial and that can be determined on this motion for summary judgment.

Israel predicates its claim of a security interest in these proceeds on three separate documents:

(1) a general security agreement;

(2) a document labeled "general assignment"; and

(3) a first preferred mortgage.

The general security agreement was a typical U.C.C. agreement and the trustee concedes that it was filed pursuant to the provisions of the U.C.C. However, a tort claim is

not perfected by a U.C.C. filing since it is not subject to a U.C.C. security interest. By virtue of Section 9-104 those transactions, excluded from the U.C.C., may still serve to secure an indebtedness under other applicable law.

In discussing Section 9-104(k), Professor Gilmore said:

> "These exclusions . . . reflect the thought that such transfers are beyond the pale with respect to a statute devoted to commercial financing. The pre-Code common law of assignment or pledge will continue to apply to the excluded transfers; . . . ." Gilmore, Security Interests in Personal Property, Vol. I, p. 316 (1965). (Emphasis added).

In the general security agreement certain rights were extended to Israel. The provision in question reads as follows:

> "The Bank shall have the rights and remedies with respect to the Security of a secured party under the Uniform Commercial Code (whether or not the Code is in effect in the jurisdiction where the rights and remedies are asserted). In addition, with respect to the Security, or any part thereof, which shall then be or shall thereafter come into the possession or custody of the Bank or any of its agents, associates or correspondents, the Bank may assign, transfer, sell or cause to be sold in the Borough of Manhattan, New York City,

> or elsewhere, in one or more sales or parcels, at such price as the Bank may deem best, and for cash or on credit or for future delivery, without assumption of any credit risk, all or any of the Security, at any broker's board or at public or private sale, without advertisement, demand of performance or notice of intention to sell or of time or place of sale (except such notice as is required by applicable statute and cannot be waived), and the Bank or anyone else may be the purchaser of any or all of the Security so sold and thereafter hold the same absolutely, free from any claim or right of whatsoever kind, including any equity or redemption, of the undersigned, any such demand, notice or right and equity being hereby expressly waived and released." (Emphasis added.)

Nowhere does the document contain an assignment to Israel of a tort claim, nor may such assignment be inferred. As a matter of law without such assignment no security interest vested. The security interest vested thereunder was strictly such as was or would be subject to the provisions of the Uniform Commercial Code and as hereinabove noted, the proceeds of the tort claim are not subject to perfection or U.C.C. security interests.

I do not find from anything contained in the instrument that the drafter contemplated the inclusion of a tort claim and consequently, Israel must look elsewhere for the

assignment it seeks to establish.

I turn now to the General Assignment, the second document, wherein the provision in question reads as follows:

> "THE ASSIGNOR,.....
> .....
> DOES HEREBY ASSIGN, transfer and set over unto the Assignee...and confer a security interest in, all right, title and interest of the Assignor in and to all accounts and contract rights arising under, and all moneys or claims for moneys due and to become due to the Assignor, and all liens therefor, under or arising out of, any present or future bill of lading, charter party, contract of affreightment or other contract or arrangement whatsoever, whether express or implied..... for the carriage of goods or passengers or for any other purpose whatsoever (such contracts or arrangements being hereinafter collectively called the "Contracts")......"
> (Emphasis added.)

I construe that paragraph in the General Assignment to convey only an interest in contract rights. The paragraph must be read in its entirety; a single phrase cannot be taken out of context. Scrutiny of the paragraph as a whole does not indicate any intention to include an assignment of tort claims. There is no basis for the argument that the money

received as the result of a tort claim is "money . . . arising out of any . . . arrangement whatsoever." The collision claim did not, as plaintiff argues, create an "arrangement implied in law" for the payment of damages. Had the parties intended to include tort claims in the General Assignment it would have been a simple matter to insert language that would cover that contingency.

In passing, it may be noted that in his affidavit in opposition to the motion, John G. Manos, an officer of Israel, states that the bankrupt had never revealed the existence of this tort claim. Since Israel had no knowledge thereof, it could not have intended to take an assignment thereof.

An essential element of an assignment is the intent to assign. Advance Trading Corp. v. Nydegger & Co. 127 N.Y.S. 2d 800, 801 (Sup. Ct., Bronx Cty., 1953); Malone v. Bolstein 151 F.Supp. 544, 547 (N.D.N.Y. 1956), aff'd 244 F.2d 954 (2nd Cir. 1957); Globe Indemnity Co. v. Puget Sound Co., Inc., et al., 53 F. Supp. 51, 54 (W.D.N.Y., 1943). Obviously, since the bankrupt did not disclose the existence

of the claim, it could not be said to have intended to assign it to the Bank. Moreover, the Bank, having no knowledge thereof, could not be said to have relied on the tort claim as security for its claim.

Manos' allegation that the financial statements of the bankrupt which were submitted to Israel were false in failing to reflect the existence of the subject tort claim is of no aid to Israel in this proceeding. The alleged fraudulent concealment of the tort claim was not perpetrated by the trustee, whose sole interest and function is to protect the rights of all creditors of the bankrupt by marshalling the assets of the bankrupt's estate for distribution. A fraud perpetrated by a debtor does not create a security interest in favor of the defrauded party as against other creditors. Matter of Plotkin; 56 Misc. 2d 754, 760-761, 290 N.Y.S. 2d 46 (Surr. Ct., N. Y. Cty., 1968); In re Estate of Bleier, Jr., 75 Misc. 2d 436, 437-8, 347 N.Y.S. 2d 895, 896.

The final document relied upon by Israel is its first preferred mortgage on the vessel, SS John Crosby,

made on or about January 15, 1971, the time Israel made its loan to the bankrupt.

The accident in question, out of which the tort claim arose, occurred in October, 1969, more than a year prior to the execution of the mortgage.

The entire extent of the security interest conferred by this mortgage is set forth as follows:

> ". . . the Owner does hereby mortgage, and confer a security interest in, unto the Mortgagee, its successors and assigns, the whole of the Vessel, together with all engines, machinery, apparel, equipment and all other appurtenances thereunto appertaining or belonging, and also any and all additions, improvements, and replacements hereinafter made in or to the Vessel, or any part thereof, or in or to her engines, machinery, apparel, equipment and other appurtenances aforesaid;" (Emphasis added) (Page 3 of Mortgage annexed to affidavit in opposition of Manos as Exhibit 4).

The mortgage explicitly states that the bankrupt grants a security interest in the whole of the vessel and all of the appurtenances thereunto appertaining. This does not include tort claim proceeds.

Israel argues that by virtue of paragraph 15(5),

the mortgage should be deemed to contain an assignment of the tort claim:

> "15. In case any one or more of the following events, herein termed 'Events of Default,' shall happen;.....
> .....
> then, and in each and every such case the Mortgagee may.....
> (5) demand, collect, receive, compromise and sue for, in the name of the Owner or otherwise, all freight, hire, earnings, issues, revenues, income and profits of the Vessel, all amounts due from underwriters under any insurance thereon as payments of losses or as return premiums, or otherwise, and all other sums due or to become due in respect of the Vessel, or in respect of any insurance thereon, from any person whatsoever, and make, give and execute, in the name of the Owner acquittances, receipts, releases or other discharges for the same, and to endorse and accept in the name of the Owner all checks, notes, drafts, warrants, agreements and other instruments in writing with respect to the foregoing, and the Owner does hereby irrevocably appoint the Mortgagee or its appointees, successors or assigns the true and lawful attorneys-in-fact of the Owner, upon the happening of an Event of Default, to do all said acts."
> (Emphasis added.)

It is clear that paragraph 15(5) constitutes a power of attorney and not an assignment. Although it is

true that "no specific or particular words are required to constitute an assignment," Malone v. Bolstein, 151 F. Supp. 544, 547 (N.D.N.Y. 1956), it must also be noted that:

> "While no special form of words is necessary to effect an assignment it is requisite that there be a perfected transaction between the parties, intended to vest in the assignee a present right in the things assigned. An assignment at law contemplates a completed transfer of the entire interest of the assignor in the particular subject of assignment, whereby the assignor is divested of all control over the thing assigned." Coastal Commercial Corporation v. Samuel Kosoff & Sons, Inc., 10 A.D. 2d 372, 376 (Fourth Dept. 1960).
>
> See also: Krause v. Central Ins. Co. of Baltimore, et al., 40 N.Y.S. 2d 736, 741 (Sup. Ct., Queens Cty., 1943); Modern Kitchens of Syracuse, Inc. v. Thomas Damiano, et al., 51 Misc. 2d 264, 265 (Sup. Ct., Onondaga Cty., 1966); Smith v. City of New York, 74 Misc. 2d 723, 724 (Sup. Ct., Kings Cty., 1973).

In other words, an assignment vests title to the subject of the assignment in the assignee. (See New York General Obligations Law §13-105). Paragraph 15(5) obviously does not transfer ownership of or title to the assets referred to therein from the bankrupt to Israel. It merely gives

Israel the power to perform certain acts "in the name of the Owner" as the bankrupt's "true and lawful attorneys-in-fact."

Language similar to paragraph 15(5) of the Mortgage was considered by the New York Court of Appeals in Spencer v. Standard Chemicals and Metals Corporation, 237 N.Y. 479 (1924). In that case an alleged assignment gave the alleged assignee "power to commence or prosecute any suit or action or other legal proceedings for the recovery of damages . . . debts, demands, choses in action, causes or things whatsoever in the United States of America due or to become due to me and to prosecute and follow and discontinue the same if he shall deem it proper and for me and in my name or his name to take all steps and remedies necessary and proper for the recovery . . . of any . . . sum or sums of money, choses in action or other things whatsoever that is, are or shall be by my said attorney thought to be due . . . to me in my right or otherwise, and also for me and in my name to compromise, settle and adjust all causes." In addition, as in paragraph 15(5) of the mortgage, presently under consideration, the alleged

assignee was also given the authority and power to sign any release or receipt and to substitute other attorneys in his place and stead. The Court of Appeals held that the alleged assignment was in fact a power of attorney. Citing the Spencer case, the Supreme Court has succinctly stated:

> ". . . a power of attorney to sue, standing alone, does not under the New York law operate as an assignment to vest the attorney with such title or interest as will enable him to maintain the suit in his own name. . . ." Titus v. Wallick, 59 S. Ct. 557, 306 U.S. 282, 289, 83 L.Ed. 653 (1939).

Plaintiff also points to paragraph 19 of the Mortgage which states:

> "19. The proceeds of the sale or . . . requisition of the Vessel, the net earnings from any management, charter or other use of the same by the Mortgagee under any of the powers above specified, including the proceeds of any claim for damages on account of the Vessel and of any insurance moneys received by the Mortgagee for the account of the Vessel while exercising any such power or otherwise, and the net proceeds of any other sums collected by the Mortgagee in the name of the Owner or otherwise by virtue of the provisions of this Mortgage, may be applied by the Mortgagee as follows:

> FIRST: To the payment of all expenses and charges, . . . made or incurred by the Mortgagee in the protection of its rights or the pursuance of its remedies hereunder . . .
>
> SECOND: To the payment of the Note . . . and of all other sums secured hereby . . .
>
> THIRD: To the payment of any surplus thereafter remaining to the Owner or to whomsoever may be entitled thereto. . . ." (Emphasis added.)

It is apparent that this paragraph merely provides Israel with a medium for the repayment of the indebtedness secured by the mortgage. It does not create a security interest in or give an assignment of any of the assets of the bankrupt. Rather, it gives Israel a right of diversion with respect to any monies of the bankrupt that it may have collected pursuant to the exercise of its powers and remedies under the mortgage. Since Israel neither prosecuted the bankrupt's tort claim nor collected the proceeds thereof, it has no secured interest therein. As has been noted:

> " . . . nor can the basis of an equitable lien attaching to these moneys be founded upon the mere promise of (debtor-alleged assignor)

> that it (creditor-alleged assignee) could apply payment out of any property belonging to the latter that came into its hands. . . . Furthermore, the Court construes the diversion power granted to the (creditor-alleged assignee) merely as a means devised to control the receipt of any 'money, accounts or property' belonging to (debtor-alleged assignor) thereby insuring the ready payment of moneys owed to the (creditor-alleged assignee). In any event, such 'moneys, accounts or property' if rightfully (debtor's-alleged assignor's) coming into (creditor's-alleged assignee's) possession, nevertheless would not be held as security for the indebtedness, but would ipso facto become the payment or medium for its extinguishment pro tanto." Authorized Credit Corp. v. Enterprise Industrial Co., 109 N.Y.S. 2d 687, 690-691 (City Court of City of New York, 1951).

Counsel for Israel concedes that there is no express assignment of this tort claim. It is clear from the General Security Agreement that the draftsmen of that document did not intend to give Israel any more rights than a secured party would have obtained under the Uniform Commercial Code. Under the common law of New York an interest in the tort fund could be obtained

only by an assignment thereof and none of the documents relied upon can be construed to constitute such assignment.

Israel's papers in opposition to the instant motion make reference to other contingent or potential assets of the bankrupt's estate that may, in the future, result in additional monies coming into the hands of the trustee. These have not yet materialized or resulted in any recovery by the trustee. Hence they are not subject to the instant reclamation proceeding. See, 2 Collier on Bankruptcy, Par. 23.11, at 588 (14th Ed.); 4A Collier on Bankruptcy, Par. 70.39, at 466-467 (14th Ed.).

This decision on the collision tort claim is therefore without prejudice to Israel's rights to seek reclamation of any amounts that may be collected by the trustee on the other claims.

The motion for summary judgment is granted and the complaint is dismissed. Settle order in conformity with the foregoing on five days' notice of settlement.

Dated: New York, New York
May / , 1975.

Bankruptcy Judge

ORDER OF BANKRUPTCY JUDGE HERZOG

Israel Discount Bank Limited, the plaintiff herein, by its attorneys, Burke & Parsons, Esqs., having commenced an adversary proceeding to reclaim (1) certain monies in the sum of $20,968.16 now in the possession of the defendant herein, Jacob Gottesman, Trustee in Bankruptcy of Ore Cargo, Inc., and (2) any other property presently in the possession of the defendant and subject to plaintiff's alleged security interest, and the defendant, by his attorneys, Sherman & Citron, Esqs., having moved (1) to dismiss the complaint seeking reclamation on the ground that it fails to state a claim upon which relief can be granted, or in the alternative (2) for summary judgment dismissing the complaint, and said motion having regularly come on to be heard,

NOW, on reading and filing the notice of motion dated January 20, 1975, the affidavit of Michael Wexelbaum,

in support of the motion, sworn to the 20th day of January, 1975, the summons and complaint heretofore served herein, the affidavit of J. Lester Parsons, III, in opposition to the motion, sworn to the 13th day of February, 1975, the affidavit of John G. Manos, in opposition to the motion, sworn to the 10th day of February, 1975, the reply affidavit of Michael Wexelbaum, in support of the motion, sworn to the 12th day of March, 1975, the supplemental affidavit of John R. Rogers, in support of the motion, sworn to the 27th day of March, 1975, and after hearing Sherman & Citron, Esqs., by Michael Wexelbaum, Esq., of counsel, for the defendant, in support of the motion, and Burke & Parsons, Esqs., by J. Lester Parsons, III, Esq., of counsel, for the plaintiff, in opposition thereto, and after due deliberation having been held thereon, and this court having duly rendered its decision, dated May 1, 1975, it is

ORDERED, that the motion for summary judgment is granted and the complaint be and it hereby is dismissed; and it is further

ORDERED, that the dismissal of the complaint herein is without prejudice to the rights of the plaintiff, Israel Discount Bank Limited, to seek reclamation of any additional monies or property that may at a later date come into the possession of the Trustee in Bankruptcy of Ore Cargo, Inc.

Dated: May 12, 1975
New York, N. Y.

/s/ ASA S. HERZOG
Bankruptcy Judge

Bankruptcy Judge

ited States of America)
ithern District of New York) ss

ASA S. HERZOG, Bankruptcy Judge, in and for
e said district, do hereby certify that the within instru-
ent is a true and correct copy of the original as the same
pears of record in my office.

In Witness Whereof, I hereunto set my hand this 12
of May, 19 75

ASA S. HERZOG
Bankruptcy Judge

By Doreen Brown-Newton

ORDER OF JUDGE DUFFY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

72 B 878

In re
ORE CARGO, INC.,
Bankrupt

ISRAEL DISCOUNT BANK LIMITED,
Plaintiff,

-against-

JACOB GOTTESMAN, Trustee in
Bankruptcy of Ore Cargo, Inc.,
Defendant.

NOTICE OF APPEAL
TO DISTRICT COURT

BURKE & PARSONS
52 WALL STREET
NEW YORK, N. Y. 10005
TELEPHONE DIGBY 4-1030

Endorsement
72 B 878

The order appealed from is affirmed.

IT IS SO ORDERED.

FILED
JAN 8 1976
EDWARD J. RYAN

Kevin Thomas Duffy, U.S.D.J.

U.S. DISTRICT COURT
FILED
JAN 5
S.D. OF N.Y.

New York, New York
December 31, 1975

MICROFILM
JAN 7 1976

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Copy Received
May 27, 1976
Sherman & Litton
Attorneys for Defendant-Appellee